Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-341

Appeal M-9300555

Metropolitan Toronto Police Services Board

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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant, acting as his son's agent, has requested copies of all information concerning his son and a particular investigation in the possession of the Metropolitan Toronto Police Services Board (the Police). The appellant has indicated that he does not seek access to certain personal information of other individuals, nor to any Police codes. For ease of reference in this order, I will use the term "appellant" to refer to the individual to whom the requested information relates, i.e., the son.

The records at issue in this appeal (and their duplicates) may be described as follows:

(1) Portions of Police Occurrence Reports, Supplementary Reports, Records of Summons, Supplementary Records of Summons, Records of Arrest and Supplementary Records of Arrest: Pages 5, 6, 7A, 9, 12(28), 13(14, 29 and 30), 16(32), and 26;

(2) Portions of pages from police officers' notebooks: Pages 44, 46, 57-62;

(3) Copies of property receipts: Pages 34-37;

(4) Portions of a letter from the Metro Action Committee on Public Violence Against Women and Children (METRAC) to the Police: Pages 47(53) and 48(54);

(5) Portions of an internal police memorandum re: letter from METRAC: Pages 55 (the first sentence of the second paragraph only) and 56; and

(6) Audio cassette Interview Tape: Page 63.

The Police rely on the following exemptions to deny access to these records:

- invasion of privacy - sections 14(1) and 38(b)
- endanger life or safety - section 8(1)(l)
- law enforcement - section 8(2)(a)

The appellant maintains that the Police should have more responsive records in their possession than those previously identified. Accordingly, the reasonableness of the search by the Police for the records is also an issue in this appeal.

Finally, the appellant seeks to have his personal information on Pages 1 and 2 of the record corrected.

DISCUSSION:

PRELIMINARY ISSUE

Application of the Charter of Rights and Freedoms

In his representations and throughout this appeal, the appellant has maintained that the Canadian Charter of Rights and Freedoms (the Charter) requires that the Police disclose all information pertaining to him in order that he may review it to ascertain if it is correct.

Based on past orders of the Commissioner's office, I will assume that I have jurisdiction to determine a Charter challenge to the provisions of the Act arising in matters properly before me (Orders 106 and P-254). However, I must be convinced by a clear and compelling argument that the sections of the Act which the appellant seeks to impugn are, in fact, inconsistent with the Charter (Order 106).

I do not accept the appellant's arguments on the application of the Charter in this case. He does not refer to any specific provisions of the Act which may violate his rights to "undisrupted enjoyment of life, limbs, body health and reputation". Moreover, he seems to suggest that under the Act he is entitled to receive access to all of his personal information, while at the same time acknowledging that "the 'burden of proof' for non disclosure of such information lies with the Toronto Police".

Accordingly, I do not accept the appellant's assertions that the refusal of the Police to disclose his personal information may violate his rights under the Charter.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have carefully reviewed all the pages at issue in this appeal to determine if they contain "personal information" and, if so, to whom the personal information relates. I have made the following findings on this issue:

(1) Pages 5, 6, 7A, 9, 12(28), 13(14, 29 and 30), 16(32), 26, 44, 46, 47(53), 57-62, and 63 contain the personal information of the appellant **and** other individuals;

(2) Pages 34, 35, 36 and 37 contain the personal information of other individuals only; and

(3) Pages 48, 55 and 56 contain no personal information. (Page 48 does not contain the personal information of the recipient of the letter as this individual was acting in his professional capacity - this page should be disclosed to the appellant in its entirety as no other exemptions have been claimed.)

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information.

In both these situations, sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the presumptions contained in sections 14(3)(a) (medical history), 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law) and 14(3)(d) (employment or educational history) apply to the personal information at issue. They also claim that the disclosure of this information would expose an individual unfairly to harm (section 14(2)(e)) and that this is a factor which weighs in favour of privacy protection.

Having reviewed the representations of the parties and the records, I have made the following findings with respect to those pages containing both the personal information of the appellant **and** other individuals:

(1) The personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law, i.e., the Police investigation into allegations about certain activities of the appellant involving possible violations of the Criminal Code. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.

(2) None of this information falls within the ambit of section 14(4). Nor has the appellant submitted that section 16 of the Act applies to this personal information.

(3) Accordingly, the exemption in section 38(b) applies to the portions of Pages 5, 6, 7A, 9, 12(28), 13(14, 29 and 30), 16(32), 26, 44, 46, 47(53), 57, 58, 59, 60, 61 and 62 at issue and 63 (the tape) in its entirety.

The remaining pages are those containing the personal information of individuals other than the appellant - Pages 34, 35, 36 and 37.

Based on the same analysis that I have just undertaken, I find that the personal information contained in these pages also falls within the presumption in section 14(3)(b) of the Act and that this presumption has not been rebutted. Accordingly, the information at issue in these pages is exempt from disclosure under section 14(1) of the Act.

LAW ENFORCEMENT

The Police have claimed that the information at issue on Page 55 and that withheld from Page 56 should not be disclosed based on the law enforcement exemptions in sections 8(1)(l) and 8(2)(a) of the Act.

Section 8(1)(l) of the Act states:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

Pages 55 and 56 comprise an internal police memorandum, dated April 7, 1993, dealing with the approach taken by the Police to deal with the behaviour commonly known as "stalking". The Police appear to suggest in their representations that disclosure of the withheld portions of these pages could reasonably be expected to facilitate the commission of an unlawful act (section 8(1)(l)) in that the knowledge of the information contained in these pages would somehow result in individuals engaging in this activity.

I do not accept this submission. As the Police themselves acknowledge, in August of 1993, Bill C-126 was proclaimed which introduced the newly-created offence of criminal harassment. This Criminal Code offence addresses many of the actions about which the Police have concerns and clearly renders the comments on Pages 55 and 56 of the record much less relevant. Accordingly, I do not find that the Police have provided sufficient evidence to link disclosure of this information with the alleged harms. Therefore, I find that section 8(1)(l) of the Act does not apply to exempt Pages 55 and 56 from disclosure.

For a record to qualify for exemption under section 8(2)(a) of the Act, the institution must satisfy each part of the following three part test:

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and M-17]

The Police have not provided any submissions on the application of this exemption to Pages 55 and 56. Therefore, with the exception of the two words on the top of Page 55 which are not at issue, both pages should be disclosed in their entirety to the appellant.

REASONABLENESS OF SEARCH

The appellant has indicated that there should exist notes from other police officers who were involved in investigating the allegations against him. The Police undertook a further search for these records and located an additional six pages of entries from the notebooks of two of the three named officers (Pages 57-62). These pages were disclosed in part to the appellant; the balance have been considered in this order. The Police also located an audio cassette tape (Page 63). I have also addressed the decision of the Police to deny access to this tape in its entirety.

However, the appellant has also claimed that there should exist additional records responsive to his request. In the Notice of Inquiry provided to the parties to this appeal, the Police were requested to provide, in affidavit form, a summary of the steps they undertook to locate records in response to the appellant's request. The submissions of the Police do not contain any information on this issue.

In these circumstances, I am not satisfied that the Police have made reasonable efforts to search their files for responsive records.

CORRECTION OF PERSONAL INFORMATION

Throughout this appeal, the appellant has stated that some of his personal information contained in the Police records is incorrect. The Police indicate in their representations that the appellant has not followed the proper procedures set out in section 36(2) of the Act in requesting a correction to this information. This section states:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information if the individual

believes there is an error or omission;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and

(c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

I agree that, ideally, the appellant ought to have made a specific application to the Police under this provision. However, since the Police have both indicated in their representations why they feel the correction should not be made and have provided detailed information on the nature of the information contained in the records at issue, I consider it appropriate to deal with the correction matter in this order.

The appellant specifically seeks to have his personal information on Pages 1 and 2 of the record corrected. Although he indicates in his representations that "... the material supplied by the Police from Pages 1 to Page 54 is not considered correct ...", with the exception of Pages 1 and 2, he has not specified the personal information which he feels is incorrect. Without more, I cannot consider the correction request for the other pages. Accordingly, this discussion will only address the issue of correction of the information on Pages 1 and 2.

Three requirements must be met in order for an institution to grant a request for correction of personal information:

1. the information at issue must be personal and private information; **and**

2. the information must be inexact, incomplete or ambiguous; **and**

3. the correction cannot be a substitution of opinion.

Before applying this analysis to the information at issue, it is necessary to describe Pages 1 and 2 in further detail.

Page 1 is a standard typed police form entitled "Criminal Record". It lists five charges that were laid against the appellant and their disposition. The appellant was not convicted of any of these charges; they were withdrawn upon certain conditions being satisfied.

Page 2 is a computer printout from the Master Index (MANIX) search involving the appellant. It is entitled "MANIX - CRIMINAL RECORDS [INQUIRY]". Next to the field labelled "Crime", it has the entry

"ASLT-MUR OTHER" (assault-murder other).

I have determined that the information on Pages 1 and 2 constitutes the appellant's personal information. I further find that it is private in nature. Therefore, the first requirement of the section 36(2) test has been met.

In order to determine if the second requirement noted above has been satisfied, I must determine if the information contained on Pages 1 and/or 2 is "inexact, incomplete or ambiguous".

The basis for the appellant's correction application appears to be twofold:

(1) That with respect to Pages 1 and 2, he was never **convicted** of any of the charges. Accordingly, he maintains that the heading "CRIMINAL **RECORD**" at the top of both pages is not only incorrect but is both misleading and inflammatory.

(2) The entry, "ASLT-MUR OTHER" in the field "Crime" on Page 2, is incorrect in that he was never charged with or convicted of murder.

The Police maintain that the appellant's correction request is not a proper matter for an appeal in that it relates to the manner in which the Police organize and categorize information which appears on their computer systems. The Police have explained that both pages are internal police documents used by the Police to verify if charges have ever been laid against an individual. They state that the term "Criminal Record" refers to the history of an individual's interaction with law enforcement agencies and is not restricted to convictions.

As far as Page 2 is concerned, the Police note that the "Crime" classifications are comprised of nine numerical computer codes, each of which includes a group of offences, such as crimes of violence. When the code is entered, it prints out the description of the corresponding group, such as "ASLT-MUR OTHER". Unlike the previous manual system utilized by the Police, there is no provision in this system for a notation of the specific offence with which the individual was charged. Therefore, in the present case, the Police would not circle or otherwise highlight "ASLT", one of the charges that was in fact laid against the appellant, on the above entry. MANIX does not provide a method for the individual using the system to go beyond the "Crime" entry to a more specific description of the relevant offence.

As far as the appellant's first argument is concerned, the issue turns on the interpretation to be give to the phrase "Criminal **Record**". If the appellant's contention is correct, then the information on both Pages 1 and 2 can be said to be "inexact". If I accept the interpretation of the Police, then the appellant has not substantiated his case for correction.

In the circumstances of this appeal, I am prepared to accept the explanation of the Police of the meaning of the heading of Pages 1 and 2. I am of the view that, to the law enforcement personnel who utilize these records, the term Criminal **Record** has a specific meaning which is broader than what might be generally understood by the general public. To the Police, the fact that an individual has a Criminal **Record** does not

simply mean that the person has been convicted of a criminal offence; it also includes the fact that an individual has been charged with such an offence. This fact is highlighted on Page 1 of the record in which it is clearly stated that the charges have been withdrawn and consequently, that the appellant was never convicted of any of the offences.

Accordingly, I do not find that the heading "Criminal Record" as it appears on the top of Pages 1 and 2 of the record is inexact, incomplete or ambiguous in the context in which it is used in this case. As the second requirement for the correction of this personal information has not been met, I accept the position of the Police that this request for correction of personal information need not be granted.

However, I am of the view that the information entered in the "Crime" field of Page 2 is factually incorrect. As I have noted, the appellant has never been charged nor convicted of murder. On this basis, I consider it to be fundamentally unfair for the "Murder" designation to appear on his file. I also find that the correction does not involve a substitution of opinion. Accordingly, the second and third requirements of the section 36(2) test have been satisfied.

Having concluded that the information at issue in the "Crime" field on Page 2 of the record is inaccurate, I must now determine how this information should be corrected. From a practical perspective, this means deleting the reference to "MUR", or by identifying that, in this case, the crime with which the appellant was actually charged was "ASLT" and "OTHER".

As I have indicated, this reference forms part of the computer codes used by the Police on their MANIX system. Given that the appellant has not indicated the method of correction he prefers, there are two options which come to mind to enable the Police to make the required correction:

(1) they may change the nine numerical codes to make them more specific; e.g. by breaking down the category at issue into separate categories such as "ASLT", "MURDER", "OTHER"; or

(2) indicating in some fashion, as was previously done with the manual system, that "ASLT" and "OTHER" are the applicable references in this case; e.g. by bolding, underlining or some other means of identifying the applicable charge.

There may be other methods available to the Police to make this correction. In the circumstances of this appeal, I believe it is appropriate for the Police to decide on the method which is most efficient and least disruptive to the functioning of their MANIX system.

ORDER:

1. I uphold the decision of the Police not to disclose the information contained on Pages 5, 6, 7A, 9, 12(28), 13(14, 29 and 30), 16(32), 26, 34, 35, 36, 37, 44, 46, 47(53), the first severance on page 55, 57, 58, 59, 60, 61, 62 and 63 (the audio cassette tape).

2. I order the Police to disclose to the appellant Pages 48(54) and 56 in their entirety and the second severance on Page 55, within twenty-one (21) days of the date of this order.

3. In order to verify compliance with Provision 2, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

4. I order the Police to conduct a further search for records responsive to the appellant's request and to notify the appellant in writing as to the results of this search within twenty-one (21) days of the date of this order.

5. If, as a result of the further search, the Police identify any records responsive to the request, I order the Police to provide a decision letter to the appellant regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.

6. I order the Police to provide me with a copy of the notification referred to in Provision 4 within thirty (30) days of the date of this order.

7. If any records are located as a result of this further search, I order the Police to provide me with a copy of the decision letter referred to in Provision 5 within thirty-five (35) days of the date of this order.

8. I order the Police to select the manner in which they will correct the information contained in the "Crime" field on Page 2 of the record, make the correction and notify the appellant within thirty-five (35) days of the date of this order, and notify the Commissioner's office within five (5) days of the date the correction is made.

9. I order the Police to give written notice to any person or body to whom Page 2 of the record has been disclosed, since the correction was requested.

10. The notice and decision letters referred to in Provisions 6, 7 and 8 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: July 8, 1994
Anita Fineberg
Inquiry Officer